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SUBJECT: YUGOSLAV AND RWANDA WAR CRIMES TRIBUNALS REPORT TO  
THE SECURITY COUNCIL

REF: STATE 164416

¶1. SUMMARY: The Security Council met December 10 for a briefing on the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The President and Prosecutor of each tribunal made a statement, as did all Council members and representatives from Rwanda, Serbia, and Croatia. Some of the common themes included apprehending fugitive indictees, moving forward with Completion Strategies, and addressing residual issues. USUN delivered the talking points contained in reftel. END SUMMARY.

¶2. Judge Fausto Pocar, President of ICTY, highlighted the Tribunal's unparalleled efficiency in the conduct of international criminal proceedings, and noted that the three trial Chambers continue to operate at record capacity. He attributed the increase in efficiency, at least in part, to the implementation of various measures adopted to speed up trial and appellate proceedings, including amendments to various rules of procedure. However, he said that the Tribunal has had to adjust its completion forecast due to the recent arrest of two fugitives, Tolimir and Dordevic, and because the Appeals Chamber reversed the referral of Milan Lukic under Rule 11bis. According to Pocar, with the exception of the two recent arrivals, the Tribunal will be able to complete all of its trials by the end of 2009; the other two trials will likely be completed by early 2010, and all appeals can still be concluded within 2011. To that end, Pocar stressed the importance of retaining judges in order to meet completion strategy goals. He said it is crucial that the conditions of service of Judges are correctly implemented with regard to pensions, and he conveyed the judges' disappointment with delays in commissioning the study on options for designing pension schemes. Similarly, he urged support for the Tribunal's efforts in offering incentives for staff retention. With respect to the referral of intermediate and lower-ranking accused to competent national jurisdictions, Judge Pocar emphasized the need to continue judicial capacity building efforts in the region. He also stressed that the Tribunal should not close its doors before the remaining fugitives are arrested and tried, specifically Karadzic, Mladic, Zupljanin, and Hazdic.

¶3. ICTR President Dennis Byron summarized the work of the Tribunal over the past six months, highlighting the issuance of a new indictment to prosecute a witness for giving false testimony since it was "the first such case in the history of both International Tribunals and an important mechanism for protecting the integrity of the judicial process." He also indicated that the Tribunal's four courtrooms would be at maximum utilization during 2008, and that special

arrangements will have to be made if there are any new developments, including arrest of any of the fourteen fugitives still at large. Nonetheless, he said that it was not too early to make plans for the completion of the Tribunal's appellate functions, and that unless the Appeal Chamber is supplemented, it would not have sufficient capacity to complete its anticipated workload by December 2010. Like Judge Pocar, he also raised the issues of staff retention and pension for judges; he further invited authorization to "require the Secretary General to take all reasonable measures to ensure that the Tribunal is able to retain its staff in order to achieve its mandate strategy." Judge Byron urged cooperation in arresting the fourteen remaining fugitives, relocating acquitted persons, and strengthening national capacity building efforts. Additionally, he indicated that an Advisory Committee on Archives has been engaging in informal consultations and is expected to provide recommendations before the next reporting period.

14. In her final address to the Security Council as Prosecutor of ICTY, Carla Del Ponte thanked the Council for its support over the past eight years and wished the new Prosecutor, Serge Brammertz, success in accomplishing his mandate. The substance of her statement focused on Serbia's lack of cooperation with respect to the search for remaining fugitives. While Del Ponte acknowledged that Serbia has taken some measures to cooperate with the ICTY, she was very critical of Serbia's failure to meaningfully assist in the arrest of Ratko Mladic and Radovan Karadzic. Indicating that Mladic and Karadzic have repeatedly been sighted in Serbia in recent years, Del Ponte said that although "Serbia has the capacity and the know-how, it has repeatedly failed to act. I believe that serious structural deficiencies in the Serbian

approach as well as willful obstruction of cooperation with the International Tribunal lie behind this failure to arrest those most responsible for the most heinous of crimes." She further urged the international community to address the issue, and specifically called upon the European Union to maintain its principled position of insisting on Serbia's full cooperation with the ICTY (i.e. arrest and transfer of Ratko Mladic) as a condition in the pre-accession and accession process. Furthermore, she circulated a letter from the Movement of Mothers of the Enclaves of Srebrenica and Zepa, requesting the Council "not to dissolve the ICTY until the last indictee charged with genocide and crimes against humanity is sentenced before the Tribunal."

15. Focusing his remarks on the Completion Strategy, ICTR Prosecutor Hassan Jallow specified that of the fourteen remaining fugitives, four are considered sufficiently high level for trial in Arusha, including Felicien Kabuga. While he expressed optimism about meeting the completion goals, he emphasized that there will be a substantial increase in the workload of the ICTR if referral of cases to Rwanda proves impossible or if new arrests are made in 2008. With respect to the remaining fugitives, he indicated that consultations are ongoing with various parties regarding those fugitives suspected to be in the Democratic Republic of the Congo (DRC). Furthermore, he said that Felicien Kabuga is still believed to be in Kenya, and that the Kenyan government has reaffirmed its commitment to cooperating with the Tribunal. He also highlighted Rwanda's continued cooperation with the Tribunal, and he thanked the Council for its September 14 decision to reappoint him as ICTR Prosecutor.

16. All fifteen members of the Council made statements in support of the two tribunals, and thanked Carla Del Ponte for her dedicated service as ICTY Prosecutor. Speakers underscored the importance of working toward the Completion Strategies and identifying related residual issues. While the majority of speakers indicated that the completion dates were indicative deadlines and should depend on the apprehension of the remaining fugitives, most notably Ratko Mladic, Radovan Karadzic, and Felicien Kabuga, China, South Africa, and Russia recommended scrupulous adherence to the

Completion Strategies. Council Members also called upon Member States, specifically Serbia, Kenya, and the DRC, to assist in the arrest of fugitive indictees. Additionally, with respect to the issue of staff retention, Congo made a proposal to grant fidelity bonuses for staff members who stay on until dissolution of the tribunals.

¶7. Joseph Nsengimana, Permanent Representative of Rwanda, addressed the Council to reaffirm his government's support for the ICTR and to urge the Council to ensure Member State cooperation in apprehending the remaining fugitives. He noted the progress with respect to the transfer of cases to national jurisdictions, and suggested that to the extent possible, pending cases should be transferred to Rwanda for purposes of justice, efficiency, and reconciliation. He also welcomed the Council's continued attention on the question of transfer of convicts to serve sentences in Rwanda. Additionally, he made a strong appeal for the transfer of all court documents and materials to Rwanda, as they constitute an important part of the country's recent history.

¶8. Similarly, the Serbian Permanent Representative emphasized his country's commitment to cooperate with the ICTY, not only because of international obligations, but also because of respect for international humanitarian law and a desire to make a clear cut with the legacy of the Milosevic regime. As evidence of Serbia's cooperation, he pointed to assistance with respect to arrests and indictee transfers, increased coordination with the Office of the Prosecutor, access to witnesses and archives, and production of documents. He also indicated that Serbia is fully equipped to hear cases transferred from the ICTY, and he expressed the belief that the four remaining fugitives will be located and apprehended in the nearest future.

¶9. Croatia addressed the Council to highlight some of the residual issues associated with the ICTY's Completion Strategy. The Croatian representative said that regional consideration should be given to issues such as archives and the serving of sentences. Furthermore, she said that national jurisdictions should play an important role in the Tribunal's legacy. With respect to the remaining fugitives, she stressed that they must be tried at the Tribunal since just punishment is a deterrent. To that end, she expressed

dismay over the recent ICTY ruling in the Vukovar Hospital patients' massacre case.

¶10. Following the statements by Member States, Pocar, Byron, and Del Ponte provided final remarks and observations. Judge Pocar stressed that the Council's commitment to supporting the Tribunals until the full completion of their work would be of extreme value. In response to a question by the Italian delegation, he also explained the rationale for his proposal for early appointment of ad litem judges as a temporary measure to facilitate the Tribunal's work. Essentially, he said that early appointment would be helpful since three of the current ad litem judges would be unable to complete new trials given the upcoming expiration of their terms. Judge Byron expressed appreciation for Rwanda's cooperation and reiterated his commitment to achieving the Completion Strategy. Del Ponte emphasized that the four remaining ICTY fugitives should not be allowed to escape justice, and that they must be tried at the Tribunal. Furthermore, she stressed that under no circumstances should Mladic and Karadzic be allowed to stand trial in Belgrade given their status as local heroes. She was unable to provide substantive information on Haradinaj, as requested by Russia, since the investigation is ongoing. Khalilzad